

## CCRB INVESTIGATIVE RECOMMENDATION

|   |   |  |  |                                    |                                 |
|---|---|--|--|------------------------------------|---------------------------------|
| Investigator:<br>Lesley Henry                     | Team:<br>Team # 5   | CCRB Case #:<br>200817988                  | <input type="checkbox"/> Force                         | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|   |   |  | <input checked="" type="checkbox"/> Abuse              | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Saturday, 12/13/2008 11:00 PM | Location of Incident:<br>Intersection of Flatlands Avenue and Williams Avenue | Precinct:<br>69                            | 18 Mo. SOL<br>6/13/2010                                | EO SOL<br>6/13/2010                |                                 |
| Date/Time CV Reported<br>Sun, 12/14/2008 4:01 PM  | CV Reported At:<br>CCRB   | How CV Reported:<br>Call Processing System | Date/Time Received at CCRB<br>Mon, 12/15/2008 12:34 PM |                                    |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |

| Subject Officer(s)       | Shield | TaxID  | Command |
|--------------------------|--------|--------|---------|
| 1. POM Edgardo Carrieri  | 18255  | 944417 | 075 PCT |
| 2. POM Thomas Napolitano | 29370  | 940682 | 075 PCT |

| Officer(s)              | Allegation   | Investigator Recommendation |
|-------------------------|--|-----------------------------|
| A.POM Edgardo Carrieri  | Abuse: PO Edgardo Carrieri stopped the car in which § 87(2)(b) was an occupant.  |                             |
| B.POM Thomas Napolitano | Abuse: PO Thomas Napolitano stopped the car in which § 87(2)(b) was an occupant. |                             |
| C.POM Thomas Napolitano | Abuse: PO Thomas Napolitano frisked § 87(2)(b) § 87(2)(b)                        |                             |
| D.POM Thomas Napolitano | Abuse: PO Thomas Napolitano searched § 87(2)(b) § 87(2)(b)                       |                             |

### Synopsis

On December 13, 2008, at approximately 11:00pm, § 87(2) § 87(2)(b) was stopped while driving by PO Thomas Napolitano and PO Edgardo Carrieri of the 75<sup>th</sup> Precinct at the intersection of Flatlands and Williams Avenues in Brooklyn (**allegations A and B**). PO Napolitano requested § 87(2) § 87(2)(b) to exit the vehicle and he complied. § 87(2) § 87(2)(b) walked to the back of his vehicle where PO Napolitano conducted a frisk by patting his waistband and legs (**allegation C**). PO Napolitano searched § 87(2) § 87(2)(b) by placing his hands in § 87(2) § 87(2)(b) coat and pants pockets, removing his keys, money and wallet (**allegation D**). § 87(2) § 87(2)(b) was eventually released without being issued a summons or being placed under arrest.

§ 87(2)(g)

### Summary of Complaint

§ 87(2) § 87(2)(b) is a § 87(2)(b) old, black male with black hair and brown eyes. § 87(2) § 87(2)(b) filed a complaint with the CCRB through the call processing system on December 15, 2008 (encl. 5a-e). He provided a telephone statement on December 19, 2008 (encl. 5a-e) and was interviewed at the CCRB on December 23, 2008 (encl. 5a-e).

On December 13, 2008, at approximately 11:00pm, § 87(2) § 87(2)(b) exited the parking lot at Pathmark and made a left towards Flatlands Avenue driving a blue 1998 Lexus GS 300 with Texas plates. § 87(2) § 87(2)(b) car does not have a front license plate, but has a plate located on the rear of the car which does not have registration stickers because it is not required in Texas. § 87(2) § 87(2)(b) noticed a marked patrol car headed towards him in the opposite direction and he watched the officers as they slowed down beside him and peered into his car. While at a red light at the intersection of Flatlands and Williams Avenue, § 87(2) § 87(2)(b) noticed the officers make a u-turn and drive up behind him. As § 87(2) § 87(2)(b) turned left onto Williams Avenue the patrol car turned behind him and signaled with their lights for § 87(2) § 87(2)(b) to pull over. PO Thomas Napolitano of the 75<sup>th</sup> Precinct, who was identified through investigation, exited the driver's seat and approached § 87(2) § 87(2)(b) on the driver's side. § 87(2) § 87(2)(b) described PO Napolitano as an Italian male, 6'0" tall, less than 180 lbs and approximately 30 years of age; and read the name "Napoleon" from his badge at the time and place of occurrence. PO Edward Carrieri approached from the passenger's seat of the patrol car and stood on the passenger's side of § 87(2) § 87(2)(b) car. § 87(2) § 87(2)(b) described PO Carrieri as a white male, 5'7" tall and 170 lbs, with a receding hair line.

PO Napolitano told § 87(2) § 87(2)(b) he did not have registration stickers on his rear license plate and explained that this was why he had pulled him over. PO Napolitano requested § 87(2) § 87(2)(b) license, insurance card and registration. § 87(2) § 87(2)(b) told PO Napolitano that Texas stopped requiring registration stickers on rear license plates, and provided his license and registration. After running § 87(2) § 87(2)(b) information over the communication device within the patrol car, PO Napolitano returned, stated that § 87(2) § 87(2)(b) registration did not match his vehicle and questioned § 87(2) § 87(2)(b) about the number of vehicles he owned.

PO Napolitano told § 87(2) § 87(2)(b) to exit his vehicle and step to the back with his hands placed on top of the car; § 87(2) § 87(2)(b) complied. The officer entered § 87(2) § 87(2)(b) coat pockets and removed his keys; and flipped the tail end of § 87(2) § 87(2)(b) coat over his head and searched the inner pockets of his coat, pants pockets and frisked his waistband and legs. PO Napolitano retrieved tissue, mints, money and § 87(2) § 87(2)(b) wallet from his back pocket. § 87(2) § 87(2)(b) questioned PO Napolitano about his reason for searching him, but did not recall the officer's response. PO Napolitano informed § 87(2) § 87(2)(b) it was possible that he would be stopped again by other officers due to his missing registration stickers and released § 87(2) § 87(2)(b) without a summons.

## Results of Investigation

### **POLICE OFFICER STATEMENTS**

#### PO Thomas Napolitano

PO Thomas Napolitano is a white male, 6'3" tall, 230 lbs with black hair and brown eyes. He was interviewed at the CCRB on April 28, 2009. On December 13, 2008, PO Napolitano worked in uniform from 3:00pm to 11:35pm, assigned to patrol sector J with PO Edgardo Carrieri. The officers were assigned to a marked patrol, in which PO Napolitano was the operator. § 87(2)(g)

#### *Memo Book*

PO Napolitano made the following memo book entries in relation to the incident: At 11:00pm, Officers Napolitano and Carrieri stopped a car at the intersection of Flatlands Avenue and Williams Avenue in Brooklyn (encl. 7a-f). At 11:25pm, PO Napolitano prepared a stop and frisk report for § 87(2)(b) § 87(2)(b) (encl. 7a-f), in which he stated § 87(2)(b) was suspected of grand larceny auto.

Officers Napolitano and Carrieri were parked inside of a parking lot at the corner of Flatlands and Williams Avenue. The officers were there because it is a known area for grand larceny auto crimes, for which PO Napolitano has conducted several arrests. PO Napolitano observed a blue Lexus sedan pass him without a front plate and saw a Texas license plate in the rear of the vehicle. PO Napolitano is familiar with Texas plates and there didn't appear to be anything wrong with this particular plate; however, he was also aware from Auto Crimes training that the state of Texas requires both front and rear plates. PO Napolitano decided he would perform an investigative stop to determine whether the plate that appeared on the vehicle belong on it and discussed this briefly with PO Carrieri. Approximately 1 minute after observing the car, PO Napolitano pulled the car over at the corner of Flatlands and Williams Avenue. PO Napolitano approached § 87(2)(b) who was alone inside of the car, and requested his driver's license. PO Carrieri approached on the passenger's side of the car.

§ 87(2)(b) refused to provide his license and asked why he had been pulled over. PO Napolitano explained he would provide that information once he was given § 87(2)(b) license and registration and requested his identification again, more than twice. § 87(2)(b) sucked his teeth and asked again why he was stopped, and did not provide his identification. § 87(2)(b) held one of his hands in plain sight and the other was placed in between his thighs; a place where weapons can be held. PO Napolitano became fearful that § 87(2)(b) may have had a weapon. PO Napolitano continued to request § 87(2)(b) identification for approximately 2 minutes and when it was not received, he requested § 87(2)(b) exit his vehicle and stand at the back. PO Napolitano asked § 87(2)(b) if he had any weapons on him and § 87(2)(b) replied negatively and put his hands up. § 87(2)(b) faced PO Napolitano as the officer frisked his waistband and front pants' pocket, where he felt a cell phone. PO Napolitano determined it was a cell phone from the way it felt and did not remove the item. PO Napolitano did not enter any of § 87(2)(b) pockets or take anything out of his pockets. PO Napolitano requested § 87(2)(b) driver's license again and § 87(2)(b) took his wallet from one of his rear pockets and handed it to PO Napolitano, who then ran his information over the patrol car communication system. § 87(2)(b) was informed that he was stopped due to him missing his front license plate after he produced his license for PO Napolitano. The officers determined § 87(2)(b) car was registered to him in the state of Texas and he did not have any warrants. PO Napolitano used § 87(2)(b) identification to prepare a stop, question and frisk report (UF-250), returned § 87(2)(b) ID and released him without issuing a summons. § 87(2)(b) could have been cited, but PO Napolitano issued a warning instead, and told him to apply a front plate.

#### PO Edgardo Carrieri

PO Edgardo Carrieri is a Hispanic male, 5'7" tall, 170 lbs, with brown hair and eyes. He was interviewed at the CCRB on April 27, 2009 (encl. 8a-e). On December 13, 2008, PO Carrieri was assigned to patrol sector G in uniform, partnered with PO Napolitano and assigned to marked patrol car 4410 as the recorder. PO Carrieri did not make any memo book entries regarding this incident. § 87(2)(g)

PO Carrieri noticed a Lexus parked with a Texas plate that appeared forged inside of a parking lot. The plate looked strange and/or fake and that is what brought the car to his attention as it did not appear like other plates from Texas. PO Carrieri's patrol car was parked several spots away from the vehicle he observed. Officers Napolitano and Carrieri discussed that the plates appeared fake and decided to stop the vehicle. PO Carrieri knows that Texas requires two plates because most states require two plates. PO Napolitano asked § 87(2)(b) to see his hands, but § 87(2)(b) did not put his hands on the steering wheel. PO Carrieri did not observe any bulges on § 87(2)(b) and did not know if any questions were asked about whether § 87(2)(b) had any weapons. The officers checked § 87(2)(b) license plate and it came back registered to an older model Lexus; however, the officers determined § 87(2)(b) information was valid and figured the information registered differently in the system due to it being from Texas.

## **POLICE DOCUMENTS**

### MISD Check

The MISD check revealed Officers Napolitano and Carrieri conducted a search on § 87(2)(b) license plate § 87(2)(b) and his driver's license number (encl. 9a-e).

### PO Napolitano's BADS Arrest History

A search of PO Napolitano's arrest history in BADS revealed he made one grand larceny arrest within the confines of the 75<sup>th</sup> Precinct between January 2007 and December of 2008; he made three additional grand larceny arrests between January 2009 and his CCRB interview in April 2009 (encl. 10a-b).

### Notice of Claim

§ 87(2)(b) has not filed a notice of claim against the City of New York and/or the New York City Police Department (encl. 12a-i).

## **ADDITIONAL INFORMATION**

### Texas Transportation Code

Section 502.404 requires "that all vehicles display front and rear Texas license plates" (encl. 12a-i).

## **CRIMINAL CONVICTION HISTORY**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b)

## **CIVILIAN CCRB HISTORIES**

§ 87(2)(b) has filed 4 previous complaints with the CCRB. § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

## **OFFICER CCRB HISTORIES**

PO Napolitano has not had any allegations of misconduct substantiated against him during his 3-year tenure as a member of the NYPD (encl. 3a-b). PO Carrieri has not had any allegations of misconduct substantiated against him during his 2-year tenure as a member of the NYPD (encl. 3a-b).

## **Conclusions and Recommendations**

## **OFFICER IDENTIFICATION AND PLEADINGS**

Officers Napolitano and Carrieri were identified through an MISD check of officers who checked license plate § 87(2)(b). § 87(2)(b) recalled viewing the name "PO Napoleon" on the subject officer's badge at the time of occurrence and described PO Napolitano as a white male, 6'1" tall, 180-200 lbs, in his late 30's. PO Napolitano is a § 87(2)(b) old, white male, 6'3" tall, 230 lbs, which is similar to the description provided by § 87(2)(b). PO Napolitano's memo book entries and testimony placed him at the location interacting with § 87(2)(b) § 87(2)(g) § 87(2)(b) § 87(2)(b) described PO Carrieri as a mid-40, white male, 5'7" tall and 180 lbs, which is similar to his composition. PO Carrieri is a § 87(2)(b) old, white male, 5'7" tall and 170 lbs. In addition, PO Carrieri's testimony placed

him at the location interacting with § 87(2)(b) § 87(2)(g)

#### AGREED FACTS AND ISSUES IN DISPUTE

The following facts are **not** in dispute:

Officers Napolitano and Carrieri observed § 87(2)(b) car with one rear Texas license plate and no front plate, and they subsequently stopped his vehicle. § 87(2)(b) was asked by PO Napolitano to exit the car and he complied. PO Napolitano conducted a frisk of § 87(2)(b) by patting his waistband area and front pants' pockets.

The following facts are in **dispute**:

§ 87(2)(b), § 87(2)(g)

#### ASSESSMENT OF EVIDENCE

Officers Napolitano and Carrieri observed § 87(2)(b) vehicle and stopped him. PO Napolitano stated he decided to make an investigative stop due to the fact § 87(2)(b) vehicle only contained one rear license plate, and he received training in Auto Crimes informing him that Texas requires two plates. Section 502.404 of the Texas Transportation Code requires "that all vehicles display front and rear Texas license plates" according to the Public Information Office of the Texas Department of Public Safety. In the State of New York, two license plates are required § 87(2)(g)

PO Napolitano added that because of this infraction, he suspected § 87(2)(b) of grand larceny auto and wanted to determine whether the license plate that appeared on the vehicle, in fact belonged to the vehicle. PO Napolitano noted on the handwritten stop, question and frisk report prepared that § 87(2)(b) was suspected of grand larceny auto. In addition, PO Napolitano stated the incident location is known for high incidents of grand larceny auto, and he has made several such arrests. A review of PO Napolitano arrest history in BADS revealed one arrest for grand larceny auto within the 75<sup>th</sup> Precinct prior to the stopping of § 87(2)(b) vehicle. PO Carrieri stated § 87(2)(b) rear license plate appeared forged and that was the basis for the stop, § 87(2)(g)

§ 87(2)(b) vehicle only had a rear license plate. § 87(2)(g)

It is undisputed that § 87(2)(b) was asked to exit his vehicle and step to the back of the car. PO Napolitano made the decision to remove § 87(2)(b) from his vehicle based on the fact the officer feared for his safety due to the placement of § 87(2)(b) hands. PO Napolitano stated § 87(2)(b) held one hand in between his thigh, where weapons can be held. § 87(2)(g)

PO Carrieri § 87(2)(g) added that § 87(2)(b) refused to place his hands on the steering wheel when asked to by PO Napolitano. § 87(2)(b) stated PO Napolitano requested he exit his vehicle after he ran his information over the communication system. § 87(2)(b) did not provide information on where his hands were placed during the vehicle stop.

§ 87(2)(g)

**Allegation A - PO Edgardo Carrieri stopped the car in which § 87(2)(b) was an occupant.**

**Allegation B - PO Thomas Napolitano stopped the car in which § 87(2)(b) was an occupant.**

According to Barry Kamins' New York Search and Seizure, "an officer may stop a vehicle to investigate criminal activity when he has a reasonable suspicion that its occupants have been engaged, are presently engaged, or are about to engage in violation of the law" (encl. 1a-b). In the state of New York, having only one license plate on a vehicle is a traffic infraction. In addition, the State of Texas also requires vehicles to display both a front and rear license plate. § 87(2)(g)

§ 87(2)(g) Barry Kamins' New York Search and Seizure also states, "If a driver is lawfully stopped ...he can be ordered out of his car" (encl. 1a-b).

§ 87(2)(g)

**Allegation C - PO Thomas Napolitano frisked** § 87(2) § 87(2)(b)

Both officers testified that § 87(2)(b) refused to provide his license and registration and did not have his hands placed in a visible location. PO Napolitano stated this caused him to fear for his safety and thus, he asked § 87(2)(b) to step out of his vehicle, and in addition, asked if he had any weapons. According to Patrol Guide Procedure 212-11, an officer can "frisk [a person] if [they] reasonably suspect [they] are in danger of physical injury" (encl. 2a-c). § 87(2)(g)

**Allegation D - PO Thomas Napolitano searched** § 87(2) § 87(2)(b)

An officer is justified in searching an individual when the area frisked reveals an object that may possibly be a weapon. PO Napolitano testified to feeling a cell phone in § 87(2)(b) front pocket, which he determined by patting the object. PO Napolitano denied entering any of § 87(2)(b) pockets; a statement which PO Carrieri corroborated. However, § 87(2)(b) consistently alleged he was searched by PO Napolitano and provided details to the actions taken. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: